

# U.S. Department of Justice Civil Rights Division



**OFFICE OF SPECIAL COUNSEL  
FOR IMMIGRATION-RELATED  
UNFAIR EMPLOYMENT PRACTICES**

# What Does OSC Do?

- ◎ OSC investigates and prosecutes employment discrimination based on:
  - National origin
  - Citizenship or immigration status



# Why is this Presentation Critical to You and OSC?

- OSC's jurisdiction is all 50 states
- OSC has critical information that can help you and the community you serve
- OSC relies on community partnerships to prevent and learn about unlawful discrimination



## How can we work together?

Employer Hotline: 1-800-255-8155

Worker Hotline: 1-800-255-7688



Office of Special Counsel for Immigration Related Unfair  
Employment Practices: [www.justice.gov/crt/about/osc](http://www.justice.gov/crt/about/osc)

# Presentation Overview

- OSC History
- Types of Discrimination
- Form I-9 Process and Special Issues
- Hot topics: E-Verify/No-Match Issues
- OSC Investigations and Possible Outcomes
- OSC and Civil Rights Division Resources



# Historical Overview

## Immigration Reform and Control Act of 1986 (IRCA) :

- Imposed employer sanctions for knowingly hiring undocumented workers
- Created Form I-9 (Employment Eligibility Verification Process)
- Created OSC to enforce the anti-discrimination provision

## 1990 U.S. Government Accountability Office (GAO) Report found:

- 19% of employers (891,000), BEGAN discriminatory practices
- Asians and Hispanics were most harmed



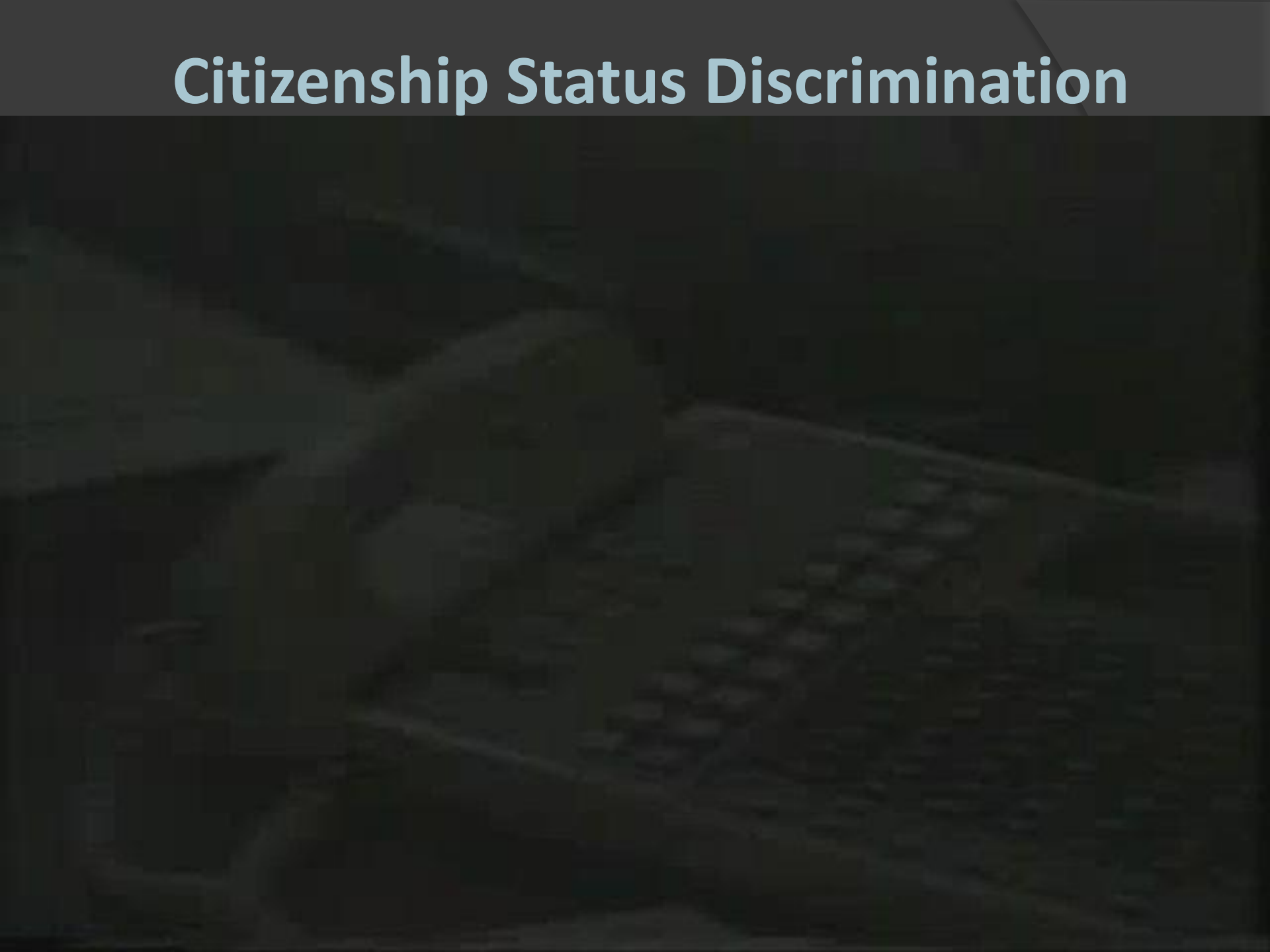
# Prohibited Conduct Under the INA's Anti-Discrimination Provision

## 8 U.S.C. 1324b

- Citizenship/Immigration status discrimination
- National origin discrimination
- Document abuse
- Retaliation or Intimidation



# Citizenship Status Discrimination



# Citizenship Status Discrimination

- ⦿ Treating employees differently based on citizenship status
  - unless in rare situations when it is required by the government
- ⦿ Hiring/firing workers, or in recruitment or referral of workers for a fee
- ⦿ Employers with more than 3 workers covered





# Who is Protected from Citizenship Status Discrimination?

## Protected:

- U.S. citizens and nationals
- Recent lawful permanent residents
- Asylees
- Refugees

**Better to check with OSC than to turn  
someone away!**



# Citizenship Status Discrimination

## Examples:

- “U.S. citizen only” hiring policy
- Preferring H-1B Visa holders
- Preferring undocumented workers



# National Origin Discrimination



I told you the slaw. The slaw.  
We only got a half hour. People will be here.

# National Origin Discrimination

- ⦿ Treating employees differently based on:
  - Country of origin/ancestry
  - Accent
  - Appearing to be from a certain country
- ⦿ Hiring/firing workers, or in recruitment or referral of workers for a fee
- ⦿ Employers with 4 - 14 employees\*

**\* The EEOC covers employers with 15 or more employees**



# Who is Protected from National Origin Discrimination?

## Protected:

- All work authorized individuals

## Not Protected:

- Undocumented individuals



# National Origin Discrimination

## Examples:

- Only hiring “native English speakers”
- Preferring people from a particular country
- Not hiring someone because s/he has a foreign accent



# Document Abuse



# Document Abuse

⦿ Employers may not, for the purpose of verifying a worker's employment eligibility (i.e. Form I-9/E-Verify):

- request more or different documents
- reject reasonably genuine-looking documents,
- specify certain documents

based on citizenship status or national origin

⦿ Employers with more than 3 workers covered





# Who is Protected from Document Abuse?

# Protected:

- All work authorized individuals

- Undocumented individuals



# Document Abuse

## Examples:

- ⦿ Requiring only non-U.S. citizens to provide a List A document, such as a Green Card
- ⦿ Requiring some U.S. citizens to provide certificates of naturalization
- ⦿ Requiring only Canadians to provide a driver's license



# Retaliation or Intimidation

- ⦿ Protection for people who:
    - file a charge with OSC
    - cooperate with an OSC investigation
    - contest action that may constitute unfair documentary practices
    - assert rights under the INA's anti-discrimination provision
- ...from intimidation, threats, coercion, and retaliation
- ⦿ Covers employers with more than 3 workers



# Retaliation or Intimidation

## Examples:


- An employer terminates a worker for having called OSC's hotline
- An employer changes a worker's schedule because the worker voiced concerns about possible citizenship status discrimination



# Document Abuse and the Form I-9

**Section 1** must be completed no later than the time of hire, which is the actual beginning of employment

**Section 2** must be completed within 3 full business days of the first day of work

 **Employment Eligibility Verification**  
Department of Homeland Security  
U.S. Citizenship and Immigration Services

USCIS  
Form I-9  
OMB No. 1615-0047  
Expires 03/31/2016

**▶ START HERE.** Read instructions carefully before completing this form. The instructions must be available during completion of this form.  
**ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

**Section 1. Employee Information and Attestation** (Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)

Last Name (Family Name)		First Name (Given Name)		Middle Initial	Other Names Used (if any)	
Address (Street Number and Name)		Apt. Number	City or Town	State	Zip Code	
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number	E-mail Address		Telephone Number		

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- ☐ A citizen of the United States
- ☐ A noncitizen national of the United States (See instructions)
- ☐ A lawful permanent resident (Alien Registration Number/USCIS Number): \_\_\_\_\_
- ☐ An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) \_\_\_\_\_. Some aliens may write "N/A" in this field. (See instructions)

For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number: \_\_\_\_\_

OR

2. Form I-94 Admission Number: \_\_\_\_\_

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: \_\_\_\_\_

Country of Issuance: \_\_\_\_\_

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. (See instructions)

Signature of Employee: \_\_\_\_\_ Date (mm/dd/yyyy): \_\_\_\_\_

**Preparer and/or Translator Certification** (To be completed and signed if Section 1 is prepared by a person other than the employee.)

I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator: \_\_\_\_\_ Date (mm/dd/yyyy): \_\_\_\_\_

Last Name (Family Name)		First Name (Given Name)	
Address (Street Number and Name)		City or Town	State
			Zip Code

**STOP** Employer Completes Next Page **STOP**

Form I-9 03/08/13 N Page 7 of 9

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative: _____	Date (mm/dd/yyyy): _____	Print Name of Employer or Authorized Representative: _____
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Form I-9 03/08/13 N Page 8 of 9



# Form I-9: Section 1

## Employee Information

- ALL employees must complete, sign, & date Section 1 **at the time employment begins.**

 **Employment Eligibility Verification**  
Department of Homeland Security  
U.S. Citizenship and Immigration Services

USCIS  
Form I-9  
OMB No. 1615-0047  
Expires 03/31/2016

**▶START HERE.** Read instructions carefully before completing this form. The instructions must be available during completion of this form.  
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**Section 1. Employee Information and Attestation** (Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)

Last Name (Family Name)		First Name (Given Name)		Middle Initial	Other Names Used (if any)	
Address (Street Number and Name)		Apt. Number	City or Town	State	Zip Code	
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number	E-mail Address		Telephone Number		

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- ☐ A citizen of the United States
- ☐ A noncitizen national of the United States (See instructions)
- ☐ A lawful permanent resident (Alien Registration Number/USCIS Number): \_\_\_\_\_
- ☐ An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) \_\_\_\_\_. Some aliens may write "N/A" in this field. (See instructions)

For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number: \_\_\_\_\_

OR

2. Form I-94 Admission Number: \_\_\_\_\_

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: \_\_\_\_\_

Country of Issuance: \_\_\_\_\_

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. (See instructions)

Signature of Employee: \_\_\_\_\_ Date (mm/dd/yyyy): \_\_\_\_\_

**Preparer and/or Translator Certification** (To be completed and signed if Section 1 is prepared by a person other than the employee.)

I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator: \_\_\_\_\_ Date (mm/dd/yyyy): \_\_\_\_\_

Last Name (Family Name)		First Name (Given Name)	
Address (Street Number and Name)		City or Town	State Zip Code

**STOP** Employer Completes Next Page **STOP**

Form I-9 03/08/13 N Page 7 of 9





# Form I-9: Section 1 (cont.)

☐ An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) . Some aliens may write "N/A" in this field.  
(See instructions)

For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number:

OR

2. Form I-94 Admission Number:

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number:

Country of Issuance:

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. (See instructions)

3-D Barcode  
Do Not Write in This Space

- Aliens whose employment authorization does not expire, such as refugee and asylees, may write "N/A" on the line asking for an expiration date.
- Aliens authorized to work who do not have an A Number should write in their I-94 admission number and passport information. Write "N/A" on the foreign passport number line and the country of issuance line if no foreign passport.
- An employee is not required to show documents proving the selected status.

Employer Hotline: 1-800-255-8155

Worker Hotline: 1-800-255-7688



Office of Special Counsel for Immigration Related Unfair  
Employment Practices: [www.justice.gov/crt/about/osc](http://www.justice.gov/crt/about/osc)

# Form I-9: Section 2

Employer completes Section 2 within 3 business days of the first day of work. (If job begins Monday, Section 2 must be completed by Thursday)

List A Identity and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization
Document Title: <input type="text"/>		Document Title: <input type="text"/>		Document Title: <input type="text"/>
Issuing Authority: <input type="text"/>		Issuing Authority: <input type="text"/>		Issuing Authority: <input type="text"/>
Document Number: <input type="text"/>		Document Number: <input type="text"/>		Document Number: <input type="text"/>
Expiration Date (if any)(mm/dd/yyyy): <input type="text"/>		Expiration Date (if any)(mm/dd/yyyy): <input type="text"/>		Expiration Date (if any)(mm/dd/yyyy): <input type="text"/>
Document Title: <input type="text"/>		<div style="border: 1px solid black; padding: 10px; text-align: center;"> <p>3-D Barcode Do Not Write in This Space</p> </div>		
Issuing Authority: <input type="text"/>				
Document Number: <input type="text"/>				
Expiration Date (if any)(mm/dd/yyyy): <input type="text"/>				
Document Title: <input type="text"/>				
Issuing Authority: <input type="text"/>				
Document Number: <input type="text"/>				
Expiration Date (if any)(mm/dd/yyyy): <input type="text"/>				

- List A (Both Identity & Employment Eligibility) OR
- List B (Identity) + List C (Employment Eligibility)

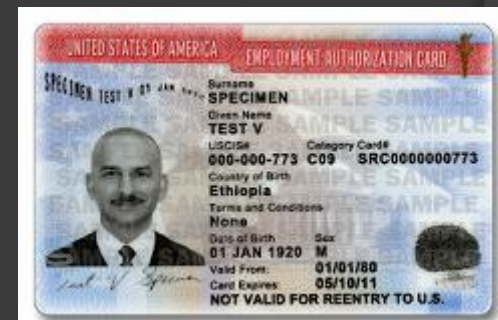




# Form I-9: Section 3

<b>Section 3. Reverification and Rehires</b> <i>(To be completed and signed by employer or authorized representative.)</i>		
<b>A. New Name</b> <i>(if applicable)</i> Last Name <i>(Family Name)</i> First Name <i>(Given Name)</i> Middle Initial	<b>B. Date of Rehire</b> <i>(if applicable)</i> (mm/dd/yyyy):	
<input type="text"/>	<input type="text"/>	<input type="text"/>
C. If employee's previous grant of employment authorization has expired, provide the information for the document from List A or List C the employee presented that establishes current employment authorization in the space provided below.		
Document Title:	Document Number:	Expiration Date <i>(if any)</i> (mm/dd/yyyy):
<input type="text"/>	<input type="text"/>	<input type="text"/>
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.		
Signature of Employer or Authorized Representative:	Date (mm/dd/yyyy):	Print Name of Employer or Authorized Representative:
<input type="text"/>	<input type="text"/>	<input type="text"/>

- U.S citizens, green cards and List B documents **should not be reverified!**
- Employers must accept a **List A** or **List C** document



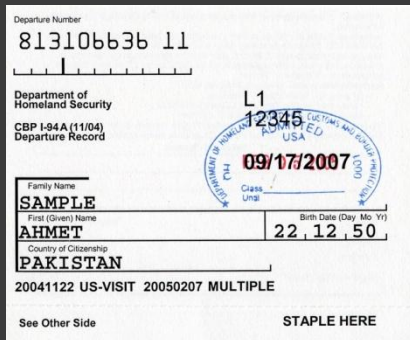
# Form I-9: Special Issues

- ⦿ There are exceptions to the general rule that documents cannot be expired:
  - Temporary Protected Status (“TPS”)
- ⦿ Older versions of documents are still valid, such as:
  - Former versions of Social Security cards
  - INS-issued Resident Alien cards with no expiration date



# I-94 Arrival-Departure Records

U.S. Customs and Border Protection (CBP) is now automating I-94s. An employee may show:



Departure Number  
813106636 11

Department of Homeland Security  
CBP I-94A (11/04)  
Departure Record

Family Name  
**SAMPLE**

First (Given) Name  
**AHMET**

Country of Citizenship  
**PAKISTAN**

20041122 US-VISIT 20050207 MULTIPLE

See Other Side

STAPLE HERE

Class  
L1  
12345  
09/17/2007

Birth Date (Day Mo Yr)  
22 12 50

I-94 Card

OR



U.S. Customs and Border Protection  
Securing America's Borders

Get I-94 Number I-94 FAQ

OMB No. 1651-0111  
Expiration Date: 11/30/2014

Admission (I-94) Number Retrieval

Admission (I-94) Record Number: 69001333663

Admit Until Date (MM/DD/YYYY): 08/24/2013

Details provided on Admission (I-94) form:

Family Name:	Testing
First (Given) Name:	Monday
Birth Date (MM/DD/YYYY):	05/06/1985
Passport Number:	123000456
Passport Country of Issuance:	Mexico
Date of Entry (MM/DD/YYYY):	03/13/2013
Class of Admission:	B1

Print-Out from CBP's Website

If the pre-printed admission # on an I-94 card is crossed out with a different # handwritten below, use the handwritten # for Section 2.



# Refugee/Asylee Issues

## Refugees and Asylees:

- Are indefinitely work authorized, just like LPRs and U.S. citizens
- Are allowed to work even if they have not yet received their Social Security numbers or cards
- May present List B and List C documents for the Form I-9
- Should be run through E-Verify only after they receive their Social Security numbers



# Temporary Protected Status (TPS) Issues

- ⦿ Government cannot issue new EADs fast enough
- ⦿ Federal Register formally announces the extension
- ⦿ **Extension is automatic**
  - **The worker must use the expired EAD**
- ⦿ Examples: Haiti, Honduras, El Salvador, Syria
- ⦿ Call OSC's hotline if you have questions



# E-Verify Program

- Electronic program that verifies employment eligibility using government databases
- With some exceptions, used for new hires only
- Tentative non-confirmation (TNC) **does not** necessarily mean the worker is undocumented
- Employers **cannot** take action against a worker while the worker is resolving a TNC
- **Call OSC if you believe an employer is discriminating in use of E-Verify**



# No-Match Issues

- ⦿ Mismatch between Social Security number and name
- ⦿ Comes from a variety of sources, such as:
  - Social Security Administration
  - Health insurance providers
- ⦿ Employers should give workers a reasonable amount of time to resolve the issue

**A no-match alone is not sufficient basis to take adverse action against a worker**



# What To Do If You Need Immediate Assistance?

- OSC hotline intervention system intervenes on a worker's behalf
- Calls can be anonymous and in **any language**
- Open 9am-5pm, Monday-Friday ET

**Worker Hotline: 1-800-255-7688**





# Ways in Which OSC Investigates Employers

OSC can investigate employers in one of two ways:

- Charge-Based

- OSC investigates charges of discrimination filed by injured parties or their representatives

- OSC-Initiated

- OSC can open independent investigations



# How to File a Charge with OSC

- ⦿ Charges must be filed within **180 days** of discrimination
- ⦿ Advocates can file the charge on behalf of the victim
- ⦿ Charges may be filed in **any** language
- ⦿ Charge Forms available from OSC Website in English, Spanish, Chinese, Vietnamese, Arabic, Haitian Creole, Korean, Russian, and Tagalog.

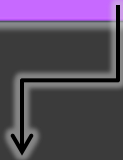


# OSC Investigation

**Charging Party files a charge with OSC  
(OSC can also open an independent investigation)**



**OSC investigates  
(regardless of outcome, charging party gets “right to sue letter” at day 120)**



**OSC dismisses  
charge  
(no jurisdiction or  
no discrimination)**



**OSC finds  
discrimination and  
resolves the matter**



**OSC finds  
discrimination and  
files a complaint in  
court (OCAHO)**



# Remedies

- Hire or rehire
- Back pay
- Injunctive Relief
  - Training
  - Monitoring
- Civil penalties



# Creating Partnerships

- What is happening in your community?

**How can we work together?**



# OSC Resources

- Call **OSC's Worker Hotline 1-800-255-7688** to speak with an OSC representative (calls can be anonymous)
- Sign up for a free webinar
- Contact OSC for printed materials
- Educational materials are also available on OSC's website: [www.justice.gov/crt/about/osc](http://www.justice.gov/crt/about/osc)
- Write us at [osc crt@usdoj.gov](mailto:osc crt@usdoj.gov)



# Rights Protected by other Offices in the Civil Rights Division

## Federal Coordination & Compliance Section

- Enforces laws that prohibit discrimination because of national origin, race or color by *recipients of federal funds*

## Criminal Section

- Prosecutes those who are accused of using force or violence to interfere with a person's federally protected rights because of that person's national origin
- These rights include areas such as housing, employment, education, or use of public facilities

## Disability Rights Section

- Investigates discrimination complaints based on disability by enforcing the Americans with Disabilities Act (ADA)

## Educational Opportunities Section

- Enforces laws in elementary and secondary schools as well as public colleges and universities and also addresses discrimination in all aspects of education



# Rights Protected by other Offices in the Civil Rights Division

## Employment Section

- Investigates complaints of a pattern or practice of illegal employment discrimination by a state or local government

## Housing and Civil Enforcement Section

- Investigates complaints of a pattern or practice of discrimination in access to or equal enjoyment of a public accommodation
- Discrimination complaints for loans with purposes other than housing (such as a car loan)

## Special Litigation Section

- Enforces the constitutional rights of institutionalized persons
- Investigates complaints that a police department has a pattern or practice of discriminating on the basis of national origin

## Voting Section

- Investigates discrimination complaints in the voting process or denying assistance to a voter when casting a ballot by enforcing provisions of the Voting Rights Act, the Voting Accessibility for the Elderly and Handicapped Act, the Uniformed and Overseas Citizens Absentee Voting Act, the National Voter Registration Act and the Help America Vote Act



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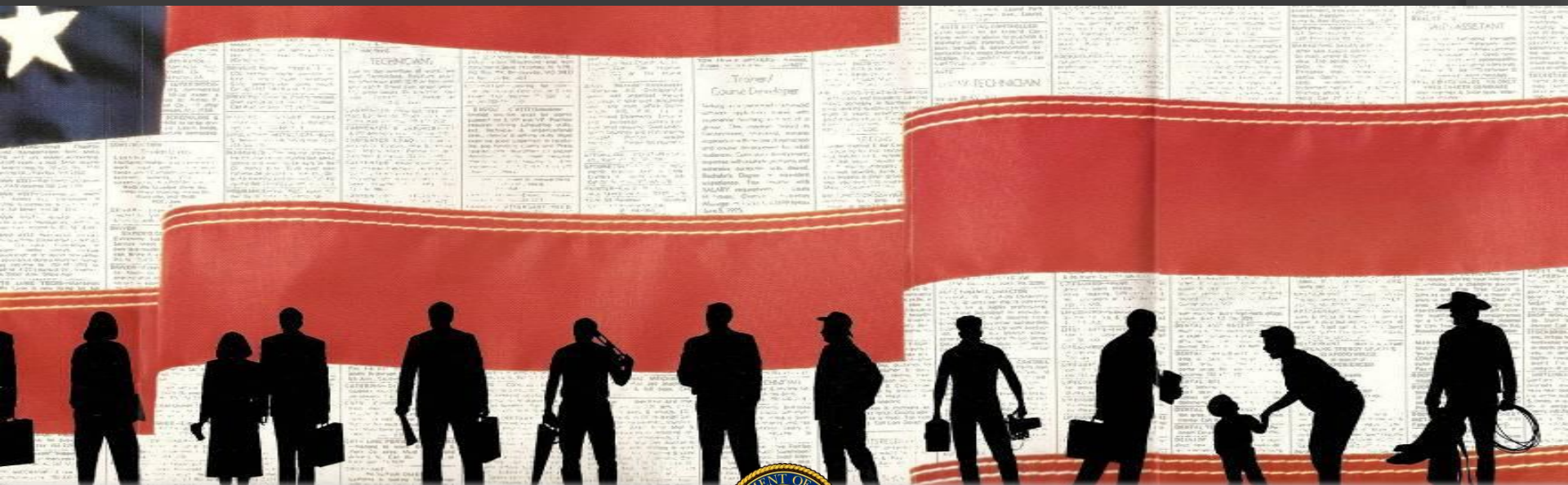


**Please feel free to contact me!**

# THANK YOU!

Office of Special Counsel for Immigration Related  
Unfair Employment Practices

***IF YOU HAVE THE RIGHT TO WORK,  
DON'T LET ANYONE TAKE IT AWAY.***



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Worker Hotline: 1-800-255-7688



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